

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

)	Case No. 07-0201 SC
)	
JEFF POKORNY, LARRY BLENN, and)	ORDER RE: SECOND SUBMISSION OF
KENNETH BUSIERE, on behalf of)	<u>OBJECTIONS TO HARDSHIP AWARDS</u>
themselves and those similarly)	
situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
QUIXTAR, INC., et al.,)	
)	
Defendants.)	
)	

The settlement agreement in the above-captioned case provided for a special hardship fund from which former Quixtar Independent Business Owners ("IBOs") who are members of the Settlement Class could receive a cash payment of up to 20 percent of their losses, for a maximum of \$10,000, minus any repayments for Business Support Materials ("BSM"), which were awarded under a separate section of the agreement. ECF No. 162-2 ("Settlement Agreement") § 6.1.2. Successful hardship claimants were required to show that their recruitment into and operation of their Quixtar business (i) caused them to file for personal bankruptcy or (ii) caused a loss of at least \$10,000 from operating their Quixtar business. Id.

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1 Per the Settlement Agreement, all hardship claims were to be
2 adjudicated by the Special Master. Losses had to be proven by a
3 "Schedule C or other schedule from a federal tax return, schedules
4 filed in connection with a bankruptcy filing, or comparably
5 reliable documentation acceptable to the Special Master." Id. §
6 6.1.2(c). The Settlement Agreement states that the Court will
7 review, de novo, any objections to the Special Master's rulings on
8 hardship claims.

9 The Court recently ruled on twenty-eight objections to the
10 Special Master's rulings on hardship claims. ECF No. 334 ("Apr. 1
11 Order"). However, on May 6, 2014, Plaintiffs submitted fifteen
12 additional claimants' objections to the Special Master's rulings.
13 ECF Nos. 337-38 ("Pls.' Submission"). These objections were timely
14 submitted, but the Claims Administrator misplaced them, so neither
15 the Court nor the Special Master was able to review them. These
16 claimants collectively submitted 2,165 pages of documents in
17 support of their objections. ECF No. 338 ("Supp. Stinehart Decl.")
18 Ex. A ("Supp. Obj'ns"). All fifteen of the objections are from
19 claimants who were awarded hardship payments, but who state that
20 they should have been awarded more than the amount recommended.

21 Having reviewed the claimants' new documents, Plaintiffs'
22 Submission, and also the Special Master's report and
23 recommendations on Plaintiffs' new submissions, ECF No. 339
24 ("R&R"), the Court rules as follows, analyzing the objections de
25 novo and not considering the timeliness of any objection.

26 **A. Peterson and Gilman**

27 These claimants were awarded the \$10,000 maximum. Claimant
28 Peterson objects that his award should be \$55,499, Supp Obj'ns at

1 2-1035, while the Gilman Claimants contend that their award was
2 "not a proportionate amount to receive," id. at 1036-68. The Court
3 OVERRULES these objections, because the Settlement Agreement does
4 not permit awards exceeding \$10,000.

5 **B. Anderson**

6 The Anderson Claimants were awarded \$3,501. Subject to their
7 prior \$2,000 payment under Section III of the Settlement Agreement,
8 which concerned Business Support Materials ("BSM"), the Anderson
9 Claimants' award netted \$1,501. They object to their award on the
10 grounds that they have over \$64,000 of Quixtar products left unsold
11 and stored in Mr. Anderson's garage. The Court OVERRULES the
12 Anderson Claimants' objection because they do not provide any
13 acceptable proof of their losses.

14 **C. Barrera & Castillo**

15 The Barrera & Castillo Claimants object on the grounds that
16 they "lost a lot of money" from Mr. Barrera's Quixtar business, and
17 that it is unjust that they were not awarded more money. Supp.
18 Obj'ns at 1147-74. The Court OVERRULES the Barrera Claimants'
19 objection because they provide only some ambiguous "invoice
20 activity reports," as opposed to tax or bankruptcy documents, and
21 they have already received \$1,600 after the deduction for the BSM
22 payment.

23 **D. Jawny**

24 The Jawny Claimants submitted acceptable proof of \$17,494 in
25 losses between 2002-04, and the Special Master awarded them \$3,499,
26 which was 20 percent of their losses. They object and ask for an
27 award of \$10,000. Supp. Obj'ns at 1175-96. The Court OVERRULES
28 this objection. The Jawny Claimants did not provide any additional

1 documents that would entitle them to the Settlement Agreement's
2 \$10,000 maximum.

3 **E. Cornelius**

4 The Cornelius Claimants were awarded \$3,000. They received
5 \$2,600 after the \$400 deduction for their BSM payment. They did
6 not submit acceptable documentation of their losses, but they
7 object to the Special Master's award and seek an increase to
8 \$4,000. Supp. Obj'ns at 1197-1223. Mr. Cornelius states that he
9 cannot provide additional documents due to amnesia and other
10 medical conditions. Id. The Court cannot rely on that
11 representation, so absent additional documentation, the objection
12 is OVERRULED.

13 **F. Titus**

14 Claimant Titus does not object to his award, but he asks that
15 it be explained. Pls.' Submission at 5. The Special Master
16 recommends that Mr. Titus's request be interpreted as an objection,
17 and suggests that the award be recalculated. R&R at 3. The Court
18 agrees. The Special Master had originally given Mr. Titus
19 substantial (but less than 100 percent) credit for submitting tax
20 returns outside the Class Period in this case, but some of that
21 credit was not included in Mr. Titus's award. Id.; Pls.'
22 Submission at 5; Supp. Obj'ns at 1224-53. The Court finds that Mr.
23 Titus's total loss was \$43,929, 20 percent of which is \$8,786, as
24 opposed to the previously calculated \$7,544. The Court GRANTS Mr.
25 Titus an additional allocation of \$1,242.

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1 **G. Gillespie & Ducham**

2 The Gillespie and Ducham Claimants were awarded \$2,000 on the
3 basis of their bankruptcy filings, which presumed a \$10,000 loss
4 per the Special Master's standard practices regarding claimants who
5 at least provided proof of bankruptcy. Claimant Gillespie obtained
6 \$560 after a \$1,440 deduction for her BSM payment, and Claimant
7 Ducham obtained \$2,000 because she had not received any BSM
8 payments. Claimant Gillespie asks for a "much higher amount," due
9 to her embarrassment and humiliation of going through bankruptcy,
10 Supp. Obj'ns at 1254-82, while Claimant Ducham contends that he
11 lost all of his documentation but "ended up filing bankruptcy for
12 \$75,969.49," id. at 1283-1338. The Court OVERRULES these
13 objections because neither claimant provided additional
14 documentation. Mr. Ducham filed bankruptcy schedules, but did not
15 sufficiently explain that his losses were due to his involvement in
16 Quixtar, and without proof, the Court declines to adjust his claim
17 upward.

18 **H. Skrdla**

19 The Skrdla Claimants proved a net loss of \$5,992 between 2007-
20 09, but the Special Master awarded them \$2,000 (as opposed to a 20-
21 percent payment of \$1,198) based on their bankruptcy filings. They
22 object to that award, claiming that they lost more than \$50,000,
23 but they provide no new documentation. Supp. Obj'ns at 1339-1413.
24 The Court therefore OVERRULES their objection.

25 **I. Howerter**

26 The Howerter Claimants were awarded \$6,902, with a net of
27 \$5,125 after a \$1,776 deduction for their BSM payment. The Special
28 Master notes that the Howerter Claimants submitted additional 2003

1 tax information after their claim was initially reviewed. The
2 Howerter Claimants ask for the \$10,000 maximum, but 20 percent of
3 their total loss of \$48,154, after the 2003 tax information's
4 addition, would be \$9,631. Supp. Obj'ns at 1414-8; Pls.'
5 Submission at 6 n.1. The Court accordingly GRANTS the Howerter
6 Claimants an additional allocation of \$2,729.

7 **J. Hamid**

8 The Hamid Claimants were awarded \$4,625, with a net of \$2,625
9 after a \$2,000 BSM deduction. They object and ask for \$10,000.
10 They submit additional tax forms, not previously considered, that
11 bring their 2003-2009 losses to \$46,978. Supp. Obj'ns at 1482-
12 1576; Pls.' Submission at 6. Twenty percent of that is \$9,395.
13 Finding consideration of the Hamid Claimants' new evidence
14 appropriate, the Court GRANTS them an additional allocation of
15 \$4,771.

16 **K. Guzman**

17 Claimant Guzman was awarded \$2,624 based on his 2006-07 tax
18 returns' stated loss of \$13,450. He later filed additional tax
19 information, including a 2005 return, which would have shown a
20 total loss of \$18,610, for an award of \$3,722. He objects that his
21 award should have been based on the \$18,610 loss. Supp. Obj'ns at
22 1577-1780. The Court GRANTS Claimant Guzman an additional
23 allocation of \$1,098, based on his additional documentation.

24 **L. Johnson**

25 Claimant Johnson had originally submitted a combined objection
26 to the settlement and hardship claim. The hardship claim requested
27 reimbursement for losses from 1993-2008, but the Class Period for
28 this case started on January 1, 2003, excluding Ms. Johnson's

1 claims before that date. In support of her Class Period losses,
2 Ms. Johnson had originally submitted her husband's Schedule C forms
3 for 2001-04 and 2006-08, showing a total loss of \$28,851, though
4 Plaintiffs note that Ms. Johnson's husband opted out of this class
5 action, and she is not named on his tax returns. Pls.' Submission
6 at 7 & n.2. Ms. Johnson objects to the Special Master's award of
7 \$5,770, which netted \$3,770 after Ms. Johnson's \$2,000 BSM payment
8 was deducted, on the grounds that it was an insult. Supp. Obj'ns
9 at 1781-1896. The Court OVERRULES the objection, because Ms.
10 Johnson did not submit additional documentation.

11 **M. Davis**

12 Claimant Davis requests an explanation of her \$4,213 award,
13 which was based on her documented loss of \$21,067. Ms. Davis's
14 award is 20 percent of the \$21,067 loss, per the Settlement
15 Agreement's maximum. The Court OVERRULES Ms. Davis's objection to
16 the extent that it asks for further consideration of the award,
17 since she submitted no additional documentation.

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20 IT IS SO ORDERED.

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22 Dated: June 9, 2014



23 UNITED STATES DISTRICT JUDGE
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